



**National Trust *for*  
Historic Preservation**  
*Save the past. Enrich the future.*

April 15, 2013

The Honorable Sam Johnson  
1211 Longworth House Office Building  
United States House of Representatives  
Washington, DC 20515

The Honorable Bill Pascrell  
2370 Russell House Office Building  
United States House of Representatives  
Washington, DC 20515

Re: Federal Historic Preservation Tax Incentives Program

Dear Representatives Johnson and Pascrell:

The National Trust for Historic Preservation is pleased to submit comments to the Real Estate Working Group of the Committee on Ways and Means concerning the multiple national benefits of the Federal Historic Preservation Tax Incentives Program.

The National Trust is a privately funded nonprofit organization chartered by Congress in 1949. We work to save America's historic places to enrich our future. With headquarters in Washington, D.C., 13 field offices, 27 historic sites, 746,000 members and supporters and partner organizations in 50 states, territories, and the District of Columbia, the National Trust works to save America's historic places and advocates for historic preservation as a fundamental value in programs and policies at all levels of government.

The Federal Historic Preservation Tax Incentives Program, also known as the Historic Tax Credit Program (HTC), is the single most significant federal investment in historic preservation. Since it was permanently written into the tax code more than 30 years ago, the HTC has created 2.3 million jobs and adapted more than 38,700 historic buildings to new and economically productive uses. Over the life of the program, the HTC is responsible for generating over \$106 billion in new investment in historic rehabilitation in communities throughout the nation. And, as described in more detail below, this tax credit more than pays for itself: the \$20.5 billion cost of historic tax credits issued over the life of the program has been more than paid for by creating more than \$25.9 billion in new federal tax revenues.

According to the Joint Committee on Taxation's February 2013 report, Estimates of Federal Tax Expenditures, the cost of the 20 percent Historic Tax Credit for the five fiscal years 2012 – 2016 is \$3.1 billion and the cost of the 10% Historic Tax Credit during the same period is \$1.5 billion.

This successful tax credit has helped to define our national heritage and identity while promoting economic development and revitalizing local communities. Weakening or eliminating the credit would endanger the economic viability of nearly every pending or future historic rehabilitation project and erode the long-standing and successful national policy to incentivize the private investment and preservation of our historic resources.

### **HTC Program Mechanics Are Designed to Promote Market Activity**

The success of the HTC is due, in part, to its straightforward market based character. Owners of historic properties may qualify for an income tax reduction by rehabilitating properties according to standards established by the Secretary of the Interior. There are two separate and independent HTC incentives available for rehabilitating historic structures. A 20 percent rehabilitation credit is available for buildings either listed individually on the National Register of Historic Places or as a contributing structure in a registered historic district. For older buildings not listed on the National Register or located in a Registered Historic District, a 10 percent rehabilitation tax credit may be available. To receive the 10 percent credit, a building must have been placed in service before 1936 and meet certain internal and external wall retention requirements.

Before the HTC may be claimed, however, the proposed rehabilitation work must be certified as conforming with the Secretary of the Interior's standards for rehabilitation. See IRS § 47 (c)(2)(B) & (C); Treas. Reg. § 1.48-12(d). This certification and review process is administered by the National Park Service (NPS), in conjunction with the State Historic Preservation Officer (SHPO) in each State. In general, in order to be certified, the rehabilitation must be consistent with the historic character of the structure or the applicable historic district. The defining historic features and character of the structure must be maintained and not destroyed or compromised by the rehabilitation work.

Significantly, federal HTC expenditures occur only after private funding has been invested and the rehabilitation project is completed. The HTC may only be claimed once a historic property is substantially rehabilitated and placed in service. In order to be considered substantially rehabilitated, the taxpayer has 24 months to demonstrate that rehabilitation expenditures exceed the adjusted basis of the building or \$5,000 whichever is greater. The rehabilitation credit is generally allowed in the taxable year the rehabilitated property is placed in service provided that the building has met the substantial rehabilitation test.

A specialized and important market within the commercial real estate industry has evolved since the HTC was established. The majority of users of the HTC are individual owners of certified historic properties, but most large-scale historic rehabilitation projects require the creation of a pass through entity (limited liability corporation or limited partnership) that admits a corporate investor. This legal structure, for large-scale historic rehabilitation projects, allows for an owner-developer to bring a corporate tax credit investor into the development entity as a limited partner or investor member. Tax credits are allocated to the investor in accordance with their ownership interests. Those interests are purchased through an equity contribution to the operating entity. This arrangement permits the developer to receive capital at a critical point in the project development. This also allows the tax credit investor to receive an economically valuable reduction in tax liability and an opportunity to participate in the economics of the project.

The HTC is a successful market-based approach to revitalizing communities through the reuse of historic resources. It also implements a long-standing and successful national policy of preserving our historic resources without the need of establishing and administering a cumbersome federal grant program subject to an increasingly unpredictable annual appropriations process. Abandoning the

existing HTC in favor of creating a federal grant-based approach to preserving historic resources would create instability in the marketplace and substantially restrict the pace at which historic rehabilitation and economic redevelopment occurs.

### **Reuse of Historic Properties Provides Tangible Benefits to the Economy and Society**

Rehabilitated historic properties are often iconic buildings contributing to significant economic uses and public benefits. We sometimes forget that many beautifully restored and economically vibrant buildings were abandoned or underutilized before the investment of the HTC. For example, Washington D.C.'s Union Station, located just north of the Capitol, is the hub of a network of local, regional and national railways, and a vibrant commercial center, yet it was a partially boarded-up and underutilized derelict structure before the historic tax credit helped leverage private investment and return it to productive economic use.

In most cases, the cost of rehabilitating historic structures is more than the costs of new construction. Historic rehabilitation projects take longer, require additional specialized labor, and involve more complicated financing arrangements than new construction. Without an incentive for commercial owners of historic structures to rehabilitate their buildings, historic rehabilitations would rarely occur and connections to our past would be irreversibly severed.

Tax incentives for preservation attract private investment to the historic cores of cities and towns. They also generate local high paying jobs, enhance property values, and catalyze increased revenues for State and local governments through increased property, business and income taxes. National Park Service statistical analysis documents that fifty percent of HTC projects support development of either market rate or low-income housing. Additionally, more than seventy-seven percent of HTC projects are in Qualified Low-Income Census Tracts with incomes at or below eighty percent of median.

### **An Enduring Bipartisan National Policy**

The national policy for incentivizing the preservation of our nation's historic resources has enjoyed longstanding bipartisan support. Beginning in 1965, a task force appointed by President Lyndon B. Johnson suggested tax deductions for preservation activities that beautified older areas of towns. Later, in 1972, after realizing federal tax policy was working at cross purposes with historic preservation, President Richard Nixon included incentives for the rehabilitation of certified historic structures in a tax reform proposal he submitted to Congress.

It was not until the nation's bicentennial, however, when the Congress and President Gerald Ford first enacted incentives for enhanced amortization and depreciation rates for specified rehabilitation costs through the Tax Reform Act of 1976. During consideration of that legislation, the Joint Committee on Taxation of the United States Congress stated:

Congress believes that the rehabilitation and preservation of historic structures and neighborhoods is an important national goal.

The Revenue Act of 1978 created additional incentives to renovate and restore historic buildings, including making certain rehabilitation expenditures eligible for a 10 percent investment tax credit.

President Ronald Reagan greatly expanded incentives for preservation when he signed the Economic Recovery Tax Act of 1981 which created the federal HTC. In 1986, when the Congress and President Reagan undertook a comprehensive reform of the nation's tax code, the HTC passed an important test when it survived with only minor modifications at a time when many other credits were eliminated. Significantly, the Committee on Ways and Means report stated:

The Congress concluded that the incentives granted to rehabilitations in 1981 remain justified. Such incentives are needed because the social and aesthetic values of rehabilitating and preserving older structures are not necessarily taken into account in investors' profit projections. A tax incentive is needed because market forces might otherwise channel investments away from such projects because of the extra costs of undertaking rehabilitations of older or historic buildings.

In the 109th Congress, then Representative Rob Portman recommended several important changes to the HTC program by introducing the bipartisan Community Restoration and Revitalization Act. While Representative Portman's bill did not pass out of committee, provisions of his legislation were later included in the Housing and Economic Recovery Act of 2008 and signed into law by President George W. Bush.

The bipartisan support for improving the HTC continues. During the 112th Congress, Representatives Schock and Blumenauer introduced H.R. 2479, the Creating American Prosperity Through Preservation (CAPP) Act, with Senators Cardin and Snowe introducing companion legislation in the Senate. The National Trust anticipates reintroduction of the CAPP Act in both the House and Senate in the 113<sup>th</sup> Congress.

The basis for such an enduring national policy is clear. Historic buildings are tangible links to our past. They are the places that express the distinctive and unique heritage of our cities, towns and rural communities. The HTC promotes the rehabilitation of historic structures of every period, size, style and type. Scaling back or eliminating the HTC would be a sharp reversal of decades of successfully implementing a national policy endorsed by multiple Presidents and Congresses. It would be a move in the wrong direction and one that the nation can ill afford.

### **Current Examples of HTC Projects**

Examples of successful historic rehabilitation projects that are revitalizing communities can be found in every part of the country and in communities large and small. In Dallas, Texas, for example, the historic 101-year-old Dallas Coffin Company located in the Dealey Plaza area of South Dallas, was converted from a vacant warehouse into the NYLO Dallas South Side, a 76 room boutique hotel that is helping to anchor future development along South Lamar Street. The hotel now contributes to establishing Dallas's South Side as a vibrant entertainment destination. After the \$10.9 million rehabilitation was completed in late 2012, the NPS determined the project conformed to the Secretary's Standards of Interior for Rehabilitation and certified the project. The developer is entitled

to receive a federal tax credit worth 20 percent of the qualified rehabilitation expenditures, or approximately \$2.2 million.

In Paterson, New Jersey city officials are documenting the historic value of dozens of mills that define the community's industrial past. While some mills are being reused as apartments, offices, and classrooms, others remain vacant and dilapidated. In February 2012, the former home of John Royle & Sons Machine Works, an 1888 factory built during Paterson's post-Civil War industrial boom, was demolished in order to lower the owner's property taxes. Conversely, in 2010, the Joseph W. Congdon Mill on Van Houten Street underwent a substantial rehabilitation when the 19<sup>th</sup> Century garment manufacturing mill was converted into a multi-family apartment complex.

Other industrial mills in Paterson await an uncertain future. With the HTC in place, these remarkable structures have a far greater chance for economically successful adaptive reuse, including contributing to the city's heritage tourism industry.

### **The Historic Tax Credit Has a Substantial and Widespread Economic Impact**

Rutgers University's Center for Urban Policy Research annually produces a report on the economic impact of the Federal Historic Tax Credit that has become the definitive source for both quantitative and qualitative information about the economic impact of the credit. This well respected report, initially commissioned by the National Trust and the Historic Tax Credit Coalition is now commissioned by the National Park Service. The current report is *The Economic Impacts of the Federal Historic Tax Credit – 2012*.

The Rutgers report demonstrates that the federal Historic Tax Credit is a government program that more than pays for itself. Over the life of the program, the IRS has issued \$20.5 billion in tax credits while generating more than \$25.9 billion in new federal tax revenue associated with historic rehabilitation projects.

The Rutgers Report evaluates data provided by the National Park Service and the National Conference of State Historic Preservation Officers from 1978 to 2012 to measure the economic impact of projects that received final National Park Service approvals for the federal Historic Tax Credit, more than 38,000 projects to date. Final NPS approvals have been awarded for projects in all 50 states, the District of Columbia, the Virgin Islands, and Puerto Rico. Using a Preservation Economic Impact Model (PEIM), researchers input data such as total project cost, location, size, and property use to calculate jobs creation, economic output, gross domestic product, income generated, and increases to federal, state, and local tax bases. The PEIM was developed in 2004 by Rutgers for the National Park Service.

The PEIM is a conservative model that demonstrates the tremendous economic benefit of HTC investments. Because the study focuses solely on the economic effects of HTC-related construction, a one-time investment, it does not offer a full accounting of the benefits of rehabilitation projects, including recurring year-by-year economic returns. Nor does it quantify other income generators such

as enhanced tourism, commercial space for businesses that generate payroll and tax payments and increased property values.

### **The Historic Tax Credit Has a Proven Record of Success**

In the spring of 2012, the National Trust commissioned Novogradac and Company LLP, a leading national accounting firm, to measure the success or failure of Historic Tax Credit projects by examining how frequently and at what amount these projects were subject to recapture under the law. The Internal Revenue Code mandates a return or recapture of tax credits if within five years of the date of the qualified rehabilitation the ownership of the property changes, or the NPS revokes its approval. A project subject to recapture can, in a sense, be considered a failure because the project was not able to secure the planned tax advantages and failed to accomplish its rehabilitation and reuse objectives.

Novogradac and Company LLP conducted an online survey of large institutional investors including national banks and Fortune 500 companies that make direct and indirect investments in tax credit transactions. Survey respondents collectively have earned more than 50 percent of total tax credits claimed over the past 10 years. Respondents were asked to report on the number of years their organization has been investing, the total amount invested, number of transactions they have been party to, the number of such transactions subject to recapture, and when during the five-year period the recapture occurred.

Based on the dollar value of credits, less than three-quarters of one percent of tax credits were subject to recapture -- a remarkable record of success. Historic rehabilitation projects have performed exceptionally well even during a period economic distress and a challenging real estate market.

A principal reason for this success is the market-based character of the HTC. Private businesses conceive, plan and implement the project, including securing financing and placing the project in service before the federal credit is issued. In contrast, certain other federal grant programs provide financial incentives in the early stages of project development, placing the entire tax-payer funded investment at risk in the event of project failure.

### **Future Opportunities for the HTC to Promote Heritage and Community Revitalization**

While a significant number of historic properties are now successfully rehabilitated, the Historic Tax Credit is needed more than ever as cities and towns across the country look for ways to revitalize and promote their communities. The National Park Service notes that approximately 1,000 buildings per year are certified on the National Historic Register that then become eligible to receive the 20 percent Historic Tax Credit. Thousands of additional historic properties become eligible to receive the 20 percent credit each year as structures that contribute to an historic district.

Without a robust Historic Tax Credit in place, thousands of abandoned or underutilized historic buildings face a serious threat of demolition. If anything, the HTC program needs to be enhanced to account for the significant need that many communities face as they seek to address an aging building stock, housing shortages, and opportunities to generate revenue. With only minor improvements, the

HTC program could operate even more successfully and better address the needs of urban and rural communities that recognize how preserving their unique histories can work to their advantage.

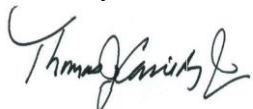
Historic preservationists and developers alike have identified several changes to the HTC program that would improve the program's effectiveness. As noted previously, the CAPP Act is awaiting introduction in the 113<sup>th</sup> Congress and modernizes the HTC in several ways: (1) increase the amount of the credit from 20 to 30 percent for smaller "Main Street" type projects that have qualifying expenditures of less than \$5 million; (2) expand the eligibility of the 10 percent non-historic credit to buildings that are fifty years or older, instead of just buildings placed into service before 1936; (3) reform the sale-leaseback of rehabilitated historic structures to facilitate non-profit and governmental use of these structures; (4) increase the amount of the historic credit by two percentage points for projects that increase the building's energy efficiency by at least 30 percent; and lastly, (5) eliminate federal taxation of state credits that are used in combination with the federal rehabilitation tax credit to provide more dollars to these rehabilitation projects that combine both credits. Adopting these changes to the HTC program would address several inefficiencies that users of the credit have identified over the last 30 years of the program.

### **Conclusion**

The National Park Service's *Annual Report on Federal Tax Incentives for Rehabilitating Historic Buildings* provides an impressive endorsement of the program and its current economic impact. For Fiscal Year 2012, the report notes the HTC generated approximately 58,000 jobs, including 20,000 in construction and 13,000 in manufacturing, and was responsible for generating \$3.4 billion in GDP, including \$1.1 billion in construction and \$0.9 billion in manufacturing. Additionally, HTC-related activity in FY 2012 generated \$2.5 billion in income, with the construction (\$0.9 billion) and manufacturing (\$579 million) sectors receiving significant benefits. These positive economic impacts were especially welcome in 2012, as the nation continued its slow recovery from a severe economic recession.

The National Trust for Historic Preservation appreciates the opportunity to describe the benefits and successful track record of the Historic Tax Credit. We look forward to working with the Committee on Ways and Means to protect and enhance the Historic Tax Credit – the key federal tax incentive that preserves our nation's past to advance the economy and community revitalization of today and tomorrow.

Sincerely,



Thomas J. Cassidy, Jr.

Vice President, Government Relations and Policy

cc: Representative Dave Camp, Chairman, Committee on Ways and Means  
Representative Sander Levin, Ranking Member, Committee on Ways and Means